

§ 4.423 Subpoena power and witness provisions.

The administrative law judge is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers, for the purpose of taking testimony but not for discovery. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the Act of January 31, 1903 (43 U.S.C. 102-106), and 28 U.S.C. 1821.

HEARINGS ON APPEALS INVOLVING
QUESTIONS OF FACT

§ 4.430 Prehearing conferences.

(a) The administrative law judge may, in his discretion, on his own motion or motion of one of the parties or of the Bureau direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings.

(b) The administrative law judge shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the administrative law judge unless modified for good cause, by subsequent order.

§ 4.431 Fixing of place and date for hearing; notice.

The administrative law judge shall fix a place and date for the hearing and notify all parties and the Bureau. All hearings held in connection with land selection appeals arising under the Alaska Native Claims Settlement Act, as amended, shall be conducted within the State of Alaska, unless the parties agree otherwise.

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§ 4.432 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the administrative law judge at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 4.433 Authority of the administrative law judge.

The administrative law judge is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery in accordance with the Act of January 31, 1903 (32 Stat. 790; 43 U.S.C.

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102 through 106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Board in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by §§ 4.423 and 4.26 of the general rules of subpart B of this part.

§ 4.434 Conduct of hearing.

So far as not inconsistent with the prehearing order, the examiner may seek to obtain stipulations as to material facts. Unless the administrative law judge directs otherwise, the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 4.435 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The administrative law judge may question any witnesses. Documentary evidence may be received if pertinent to any issue. The administrative law judge will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the administrative law judge. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an administrative law judge sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 4.436 Reporter's fees.

Reporter's fees shall be borne by the Bureau.

§ 4.437 Copies of transcript.

Each party shall pay for any copies of the transcript obtained by him. Unless a summary of the evidence is stipulated to, the Government will file the

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original copy of the transcript with the case record.

§ 4.438 Summary of evidence.

The parties and the Bureau may, with the consent of the administrative law judge, agree that a summary of the evidence approved by the examiner may be filed in the case in lieu of a transcript. In such case the administrative law judge will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record.

§ 4.439 Action by administrative law judge.

Upon completion of the hearing and the incorporation of the summary or transcript in the record, the administrative law judge will send the record and proposed findings of fact on the issues presented at the hearing to the Board. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Board such briefs or statements as they may wish respecting the facts developed at the hearing.

CONTEST AND PROTEST PROCEEDINGS

§ 4.450 Private contests and protests.

§ 4.450-1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the Act of May 14, 1880, as amended (43 U.S.C. 185), or the Act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations herein.

§ 4.450-2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to